

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: GREGORY W. SWECKER, Complainant, vs. MIDLAND POWER COOPERATIVE, Respondent.	DOCKET NO. C-01-429
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ORDER DENYING REQUEST FOR FORMAL COMPLAINT PROCEEDINGS

(Issued October 29, 2001)

On August 6, 2001, Gregory W. Swecker filed a complaint letter with the Utilities Board (IUB). The complaint follows from an earlier complaint proceeding, Docket No. FCU-99-3 (C-99-76), concerning the terms and conditions under which Mr. Swecker can connect a wind turbine generator to Midland Power Cooperative's (Midland's) electrical system. In the earlier complaint docket, the Board determined that some parts of Midland's cogeneration¹ tariff were unreasonably discriminatory and in violation of Iowa Code § 476.21 (2001) and specified the terms and conditions under which Mr. Swecker should be permitted to interconnect.

¹ "Cogeneration" is a general term for electric retail customers who also operate facilities for generating electricity; it includes renewable generators such as a wind turbine.

The current complaint concerns Mr. Swecker's continuing effort to arrange for three-phase service at his farm. The parties have submitted numerous items of correspondence to Board staff regarding the current complaint, up to and including Midland's most recent letter, dated October 17, 2001. Rather than describe each letter seriatim, the Board will summarize the situation: Following the Board's decision in Docket No. FCU-99-3, Mr. Swecker apparently requested a three-phase facilities extension from Midland, which responded to his inquiry and provided a copy of the proposed costs to extend three-phase service to the Sweckers, both with and without the wind generator. Midland also asked Mr. Swecker to state whether he intended to connect his wind generator, because a cogeneration interconnection would require different arrangements, consistent with the Board's prior order. Mr. Swecker then filed his August 6, 2001, complaint with the Board. After receiving and reviewing Midland's response to the complaint, Mr. Swecker's reply, and other items of correspondence from each party, Board staff issued a proposed resolution on September 10, 2001. Mr. Swecker responded with a letter dated September 12, 2001, requesting formal proceedings, a waiver of the Board's orders in Docket No. FCU-99-3, and operation of his wind generator pursuant to 199 IAC 15.

Iowa Code § 476.3 (2001) gives the Board jurisdiction to hear and decide complaints regarding anything done or omitted to be done by a public utility pursuant to chapter 476. Pursuant to § 476.3 and 199 IAC 6, complaints are initially processed informally, culminating in a proposed resolution from the Board's staff. After the proposed resolution, the complainant or the public utility may petition the

Board to initiate a formal proceeding, which petition must be granted if the Board determines there is any reasonable ground for investigating the complaint.

The Board will deny Mr. Swecker's petition for formal proceedings, as no reasonable ground has been shown for further investigation of this complaint. Mr. Swecker seeks to re-litigate those parts of the Board's decision in Docket No. FCU-99-3 with which he disagrees, but the proper course for Mr. Swecker to have challenged those parts of the decision was through judicial review, not a new complaint proceeding.

Mr. Swecker raises six points in his new request for formal complaint proceedings. First, Mr. Swecker has requested a waiver of the Board order in his earlier complaint, Docket No. FCU-99-3, and asks to interconnect his wind generator pursuant to 199 IAC 15. It appears Mr. Swecker is not entirely satisfied with the Board's resolution of the prior complaint and now wants to interconnect with Midland using net metering, pursuant to 199 IAC 15.11(5).

While the Board's rules are always available to Mr. Swecker on the same terms as they are available to any other member of the public, there is no provision in the Board's rules or the applicable statutes for waiver of the prior Board order. The order was issued to the parties after notice, hearing, and extensive proceedings; it was affirmed by the Polk County District Court in Office of Consumer Advocate v. Iowa Utilities Board, Polk County AA No. 3557, with respect to Mr. Swecker's appeal; he has not appealed that District Court order to the Iowa Supreme Court; and the time for so doing has expired. Thus, the Board's order is final and binding on the

parties with respect to all issues not appealed. The only remaining issue concerns the Board's application of an earlier Iowa Supreme Court decision, holding that federal law preempts Iowa's AEP statute as applied to utilities that are not subject to rate regulation. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) has appealed the Board's interpretation to the Iowa Supreme Court. The outcome of that appeal, whatever it may be, will not affect Mr. Swecker's present complaint, because the net billing rule does not apply to utilities that are not subject to rate regulation.

Mr. Swecker is a member-consumer of Midland Power Cooperative. Under Iowa law, Midland is a utility not subject to rate regulation by the Board, see Iowa Code § 476.1A. Therefore, according to the provisions of 199 IAC Chapter 15 (specifically, 199 IAC 15.2(1) "*Applicability*"), the only rules in Chapter 15 that apply to Midland and Mr. Swecker are 199 IAC 15.2(2), 15.3, and 15.10. Mr. Swecker can operate under these rules without any waiver of the orders issued by the Board in Docket No. FCU-99-3, but the net billing rule is inapplicable to this situation because of the Board's existing subrule 15.2(1), not because of the prior Board orders. Waiver of the prior orders, even if available, would not affect the application of the rules.

For his second point, Mr. Swecker states that he disagrees with the resolution of the earlier complaint when the Board found that Midland may charge the Swecker's for the specialized meter costs necessary to measure energy flow and power quality. He claims this violates the Equal Protection clause of the U.S.

Constitution and Iowa Code § 476.21, apparently because it denies him net billing under 199 IAC 15.11(5) and parallel operation under 18 C.F.R. § 292.303(e). He also claims it violates 199 IAC 15.11(7), which provides that metering for testing and monitoring must be done at the utility's expense.

Initially, it bears repeating that subrules 15.11(5) and 15.11(7) do not apply to Mr. Swecker's situation, pursuant to 199 IAC 15.2(1). Even if they applied, there is nothing in that rule that exempts cogenerators from paying the incremental costs associated with a cogeneration interconnection. Instead, subrule 15.8(1) requires that each qualifying facility (the federal term for relevant cogenerators and renewable generators) is required to pay any interconnection costs, while subrule 15.15(1) imposes the same requirement with respect to alternate energy production and small hydro facilities, or AEPs (the Iowa terms for renewable generators). So, if the Board's AEP rules relating to rate-regulated utilities applied to Midland (which they do not), Mr. Swecker would still be required to pay the incremental interconnection costs associated with his proposed use, just like any other AEP.

Finally, the Board does not agree with Mr. Swecker that the federal regulation, 18 C.F.R. § 292.303(e), is a net billing rule. The rule provides for parallel operation, but that does not mean the same as net billing. Parallel operation is a type of electrical connection, not a billing or metering method, and does not entitle Mr. Swecker to net billing.

For his third point, Mr. Swecker disagrees with the Board's earlier orders to the extent they find he is not entitled to spread the interconnection charges over a

reasonable time but must pay them up front. Mr. Swecker claims that this violates 199 IAC 15.11(3) and 18 C. F. R. § 292.306(b).

Again, under subrule 15.2(1), the requirements of subrule 15.11(3) do not apply to Mr. Swecker's situation, so the requirements of subrule 15.11(3) are irrelevant to this complaint. As for the federal rule, it does not appear to support Mr. Swecker's claim. 18 C.F.R. § 292.306(b) provides:

(b) Reimbursement of interconnection costs. Each State regulatory authority (with respect to any electric utility over which it has ratemaking authority) and nonregulated utility shall determine the manner for payments of interconnection costs, which may include reimbursement over a reasonable period of time.

Thus, the federal rule permits a nonregulated public utility such as Midland to allow interconnection costs to be spread over a reasonable period of time, but it does not require that Midland do so. In other words, the availability of a payment plan is discretionary with Midland, and so long as Midland does not exercise its discretion in a manner that is unreasonably discriminatory in violation of Iowa Code § 476.21, the Board cannot order Midland to take any particular course of action.

For his fourth point, Mr. Swecker disagrees with the parts of the Board's order in Docket No. FCU-99-3 relating to the insurance requirement, Midland's 40 percent mark-up, and the contract requirement.

All of these issues were decided in Docket No. FCU-99-3. Mr. Swecker did not seek judicial review of the Board's decision on any of these issues. He is now bound by that decision, as the time for seeking judicial review of these issues expired

some time ago, pursuant to Iowa Code § 17A.19(3) (providing that a petition for judicial review of an agency decision in a contested case must be filed within 30 days of the issuance of the decision). It is simply too late for Mr. Swecker to attempt to re-litigate these issues.

For his fifth point, Mr. Swecker asks that the Board provide the basis used by the Board to decide that non-rate regulated utilities are exempt from parallel operation by the use of a single meter supplied by the utility or exempt from net billing under federal or state law.

The Board offered an extensive explanation of the basis of its decision in its orders issued in the earlier docket and will not repeat that entire discussion here. In summary, the Board's AEP net billing rule at 199 IAC 15.11(5) only applies to sales and purchases of electricity between qualifying alternate energy production (AEP) facilities and rate-regulated utilities, pursuant to 199 IAC 15.2(1)(c). Since Midland is not a rate-regulated utility, subrule 15.11(5) does not apply to Midland, and cannot be enforced against it. 199 IAC 15.2(1)"c." (See the "Proposed Decision and Order" issued in Docket No. FCU-99-3 on March 28, 2000, at page 30.)

Finally, Mr. Swecker asks whether the Board or Midland is denying Mr. Swecker three-phase service because of his intended use of renewable energy. For the Board, the answer is "No." As for Midland, there is no evidence in this record that Mr. Swecker is being denied three-phase service under the provisions of Midland's tariff, as modified by the Board's decision in Docket No. FCU-99-3, because of his

intended use of renewable energy. Instead, it appears Midland has offered to interconnect with Mr. Swecker exactly as required by the Board's decision in Docket No. FCU-99-3.

In conclusion, the Board finds that no reasonable grounds exist for further, formal investigation of this matter. The request for formal proceedings will be denied.

IT IS THEREFORE ORDERED:

The request for formal proceedings filed by Mr. Gregory Swecker on September 12, 2001, in File No. C-01-429 is denied.

UTILITIES BOARD

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Mark O. Lambert

Dated at Des Moines, Iowa, this 29th day of October, 2001.